

### **REMARKS**

Claims 1-2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52 are pending. Claim 45 has been amended as described below. No new matter has been added.

Applicant responds to each of the Action's rejections in the order in which they are presented in the Action.

**I. Claims Compliant with 35 USC 112, 2nd ¶**

Claim 45 was rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 45 was written as a dependent claim and contained a typographical error regarding its dependency. Claim 45 has been amended herein to depend from claim 1.

**II. Claims 1, 2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52 Patentable over Katz, Clay and Alfonso**

In the January 15, 2010 Office Action, claims 1, 2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52 were rejected under 35 U.S.C. §102(b) as anticipated by Katz, as obvious, under 35 U.S.C. §103(a), in light of Katz in view of US 6,413,499 (Clay), and as obvious in light of Katz in view of US 6,017,963 (Alfonso). Applicant respectfully traverses these rejections, as detailed below.

**A. German Patent No. DE 100 17 438 (Katz) does not anticipate Claims 1, 2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52.**

The Office asserts that claim 1 is anticipated by Katz. Claim 1 contains the limitation “the outlet orifice being a spray-head shaped and sized for insertion into a user’s nostril.” On page 4 of the Office Action, in the discussion of the obviousness of claim 1, the Office states that “Katz...does not disclose the outlet nozzle 35 to be sized for insertion into a nostril” (see page 4, lines 3-4). As the Office has admitted that Katz fails to disclose this element of claim 1, it is respectfully asserted that Katz fails to anticipate the claim as a matter of law. As each of the other claims depends directly or indirectly from claim 1, they too are not anticipated by Katz. Withdrawal of the 102(b) rejection of claims 1, 2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52 is therefore warranted for this reason alone.

For the sake of a more complete response, however, Applicant wishes to address the Office’s failure to give appropriate weight to the features previously added to claim 1. The features added in the previous amendment were:

- *having the plunger structure arranged to move towards the outlet orifice in a forward direction relative to the second wall member to move the head sequentially from the first position to the second and third positions relative to the second wall member and the head is at the forward end of the plunger structure;*
- *the dispenser further having a valve mechanism which maintains the outlet orifice in a closed state;*
- *the valve mechanism having an opening pressure threshold to move the outlet orifice to an open state to permit a metered volume of the fluid product to be dispensed through the outlet orifice;*
- *the dispensing mechanism being adapted such that the opening pressure threshold is only met when the plunger structure head moves forwardly from its second to third positions relative to the second wall member.*

In point 7 of the current Office Action, the reasons why these limitations are considered as met are discussed (see page 4, lines 15-19). Applicant respectfully asserts that due regard has not been given to several points.

Firstly, Katz does not disclose when in the pumping movement of the plunger **3;31** the outlet valve **13;27;35** opens. Thus, the explanation in the current Office Action *is not based on the disclosure in Katz*, but appears to rely on the principle of inherency. It is well established that subject matter is inherent *only* when extrinsic evidence makes it clear that the subject matter necessarily flows from a disclosure of cited art. (see MPEP 2112) This requirement is a prerequisite to invoking the doctrine of inherency and cannot be avoided. Consequently, inherency may never be established by mere probabilities or even possibilities and the mere fact that a certain thing may be present (or may result) is always insufficient. As Katz is silent on the when in the pumping movement of the plunger **3;31** the outlet valve **13;27;35** opens, there is no proof that the supposedly inherent characteristic, the outlet valve opening, would be necessarily produced by the prior art process. Applicant clearly claims that dispensing mechanism is adapted such that the opening pressure threshold is only met when the plunger structure head moves forwardly from its second to third positions relative to the second wall member. For this reason Katz does not disclose the features previously added to claim 1.

Secondly, there is no disclosure in Katz that the follow-on piston **23** in the container **2** moves rearwardly in response to the plunger **3;31** moving forwardly and pressurising the fluid. Katz fails to provide any description of the interaction of the plunger **3;31** and the follow-on piston **23**. Absent such teaching of rearward movement, it is possible that the outlet valve may open as soon as the plunger moves forwardly, i.e. before it reaches the channel 22, contrary to the current Office Action assertion. As in the above instance, the Office is relying on the principle of inherency, not on what Katz discloses.

Thirdly, the features previously added to claim 1 are not a method of use, but concern operational properties required for structural elements of claim 1. Claim features concerning properties of structural elements are clearly permissible to provide a distinction over a prior art document. In total, the previously added features of claim 1 define properties for structural elements of claim 1 which are not clearly and unambiguously disclosed in Katz, and therefore Katz does not anticipate claim 1 nor the other claims which are directly or indirectly dependent thereon.

**B. Claims 1, 2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52 are not rendered obvious by the teachings of Katz in view of Clay and/or Alfonso.**

Clay and Alfonso similarly fail to disclose the elements of claim 1 that were lacking in Katz, as discussed in the section above. As neither Clay nor Alfonso teach the use of, or even have, any kind of valve or follow-on piston in conjunction with the pumping movement of a plunger it would be impossible for either Clay or Alfonso to correct the shortcomings of Katz. Thus, the combination of Katz with either Clay or Alfonso would not yield the subject matter of Claims 1, 2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52. As such, the claims are not obvious. Withdrawal of the rejection is requested.

In light of the above, Applicant respectfully asserts that Katz does not either anticipate or render obvious the subject matter of Claims 1, 2, 5, 7-8, 10-16, 18-29, 32-34, 36, 45-47 and 52 when read alone or in view of Clay or Alfonso. Applicant respectfully requests withdrawal of each of the rejections made.

### **III. Conclusion**

All claim rejections being addressed in full, Applicant respectfully requests the withdrawal of the outstanding objections and rejections and the issuance of a Notice of Allowance. Should the Examiner have any questions regarding the foregoing, Applicant respectfully requests that the Examiner contact the undersigned, who can be reached at (919) 483-9995.

Respectfully submitted,

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